

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 504 of 2000

to

FIRST APPEAL No 515 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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SPECIAL LAND ACQUISITION OFFICER

Versus

ATAJI CHATURJI DECD. THRO' HEIRS PRATAPJI ATAJI THAKORE

Appearance:

MS NANDINI JOSHI, AGP for appellant-Spl.Land
Acquisition Officer.

MR ABHIJIT JOSHI for acquiring body
MR AJ PATEL for the claimants.

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

Date of decision: 07/09/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

These appeals, which are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated August 2, 1999, rendered by the learned Assistant Judge, Mehsana, in Land Acquisition References No.3296/93 to 3307/93, by which it is held that the claimants are entitled to get compensation at the rate of Rs. 32.70 ps. per sq.mt. for their acquired lands. It may be stated that the Land Acquisition Officer had made common award on January 31, 1992 determining compensation payable to the claimants under section 11 of the Land Acquisition Act. Moreover, all the Land Acquisition References were consolidated by an order dated September 19, 1999 and common evidence was led by the parties in Land Acquisition Reference No. 3299/93. As common questions of fact and law arise for our determination in this group of appeals, we propose to dispose them of by this common judgment.

2. A proposal was received by the Government to acquire agricultural lands of village Vansol, Taluka : Kadi, District : Mehsana for the public purpose of construction of main canal of Narmada Project. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Vansol were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in the Official Gazette on May 24, 1990. Thereafter those whose lands were sought to be acquired, were served with notices under section 4 of the Act. They had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Project, Unit-III, Ahmedabad had forwarded his report to the State Government as contemplated by section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Vansol, which were specified in the notification published under section 4(1) of the Act, were needed for the public purpose of construction of main canal of Narmada Project. Therefore, declaration under section 6 of the Act was made which was published in the Official Gazette on November 9, 1990. The interested persons were thereafter served with notices under section 9 of the Act

for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 50/- per sq.mt. The Land Acquisition Officer noticed that the lands acquired were irrigated lands. He also noticed that the claimants were growing crops of millet, wheat, castord seeds, rice, raida, cumin seeds etc. and that the lands acquired had irrigation facilities. After taking into consideration the location of the lands acquired, sale instances ranging from 1984 to 1990 relating to the lands of village Vansol, crop pattern, fertility, potentiality of the lands acquired for non-agricultural use, previous awards and development which had taken place surrounding the acquired lands, the Land Acquisition Officer by his award dated January 31, 1992 offered compensation to the claimants at the rate of Rs. 2.70 ps. per sq.mt. The claimants were of the opinion that the compensation offered by the Special Land Acquisition Officer was inadequate and, therefore, they accepted the amount of compensation under protest. They filed applications under section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of appropriate amount of compensation payable to them. Accordingly, references were made to the District Court, Mehsana, which were numbered as Land Acquisition References No.3296/93 to 3307/93.

3. In the reference applications, it was contended that determination of compensation by the Special Land Acquisition Officer was inadequate, inasmuch as each claimant was earning Rs.40000- as net profit by way of sale of agricultural produces. According to the claimants, provisions of the Urban Land (Ceiling and Regulation) Act as well as Gujarat Town Planning and Urban Development Act were applicable to the lands acquired and as G.I.D.C. Estate was just near the acquired lands, they were entitled to higher compensation. It was further pleaded by the claimants in the reference applications that village Vansol had facility of bus services and primary amenities, such as schools, dispensaries, residential societies, shops etc. were available in the village, and, therefore, they should have been awarded compensation at the rate of Rs. 50/- per sq.mt. The claimants had also claimed amount under section 23(1-A) of the Act as well as interest on the amount of compensation.

4. On behalf of the State Government, written statement was filed at Exh.5 controverting the averments made in the reference applications. In the reply, it was pleaded that having regard to the use, potentiality and

fertility of the lands acquired as well as surrounding development, the claimants were not entitled to more compensation than determined by the Land Acquisition Officer and, therefore, reference applications should be dismissed.

5. On behalf of Sardar Sarovar Narmada Nigam Ltd. i.e. the acquiring body, written statement was filed at Exh.12, wherein same contentions as were raised in Exh.5, were raised.

6. Upon rival assertions of the parties, necessary issues for determination were framed by the reference court for determination. On behalf of the claimants, Mr. Maljibhai Gobarbhai, who was claimant in Land Acquisition Reference No. 3301/93 was examined at Exh.16. He deposed before the court that the lands acquired were irrigated lands and water was made available to the lands from the tubewell of Shakaraji Avadhaji. According to the witness, each claimant was taking three crops in a year. The witness informed the court that the claimants were taking crops of millet and cereals during monsoon season over and above crops of wheat, raida etc. The witness claimed in his deposition that the yield of millet was 50 maunds per Bigha and price of millet at the relevant point of time was Rs. 70 to Rs.80 per maund; whereas yield of cereal crop was 20 to 25 maunds, price of which was between Rs. 200 to Rs.250 per maund. The witness further stated that the yield of raida was 35 maunds per Bigha, price of which was Rs. 200/- per maund; whereas yield of wheat was 60 to 70 maunds per Bigha, price of which was between Rs.90 to Rs. 100 per sq.mt. The witness mentioned in his deposition that during summer, the claimants were taking crops of juvar and getting sheaves and were also earning from the sale of sheaves. The witness asserted before the court that the gross income of each claimant from the sale of agricultural produces was Rs. 30,000/- per year and claimants were able to reap rich yields, as they were using fertilizers, hybrid seeds, pesticides etc. The witness produced Extract of Village Form 7 & 12 relating to the acquired lands at Exhs.17 to 28 to substantiate his claim that the lands acquired were agricultural lands and that the claimants were taking different crops as mentioned in his deposition. The witness produced previous award of the reference court rendered in Land Acquisition Reference No.971/89 in respect of lands of village Chhatral at Exh.29, where the Court had awarded compensation to the claimants of that case at the rate of Rs.70/- per sq.mt. and claimed that the lands acquired in the instant case had the same fertility as the lands

of village Chhatral, which were subject matter of previous award. The witness stated in his evidence that village Borisana was at a distance of 5 to 6 KMs. from village Vansol and produced previous award of the court rendered in Land Acquisition References No. 174/93 to 185/93 to indicate that the court in the said cases had awarded compensation to the claimants at the rate of Rs. 50/- per sq.mt. The witness informed the court that against the award rendered in Land Acquisition References No.174/93 to 185/93, the State Government had preferred First Appeals No. 2523, 2524, 2526, 2528, 2529 and 2531 to 2534 of 1997 in the High Court, which were dismissed and the award of the reference court was confirmed. The witness produced certified copy of judgment of the High Court at Exh.31. The witness also claimed that the quality and fertility of the lands which were subject matter of Exhs.30 & 31 were same as that of lands acquired in the instant case. The witness also produced previous award of the reference court rendered in Land Acquisition References No.1091/87 to 1095/87 at Exh.32 relating to agricultural lands of village Acharasan, wherein the Court had awarded compensation to the claimants at the rate of Rs.32.70 ps. per sq.mt. The witness asserted that village Acharasan was at a distance of 2 to 2 1/2 KMs. from village Vansol and the boundary of the two villages was common. The witness further stated that the lands of village Acharasan which were subject matter of the previous award were similar in quality to the lands acquired in the instant case. The witness produced previous award of the reference court relating to agricultural lands of village Acharasan rendered in Land Acquisition References No.1718/92 to 1723/92 at Exh.34 and claimed that as those lands were similar in all respects to the lands acquired in the present case, the claimants were entitled to compensation on the basis of the said award. The witness produced certificate issued by Talati-cum-Mantri of village Vansol at Exh.35 to substantiate his claim that boundary of two villages i.e. Acharasan and Vansol was common and that the distance between two villages was 3 KMs. The witness also produced bills issued by Kalol and Kadi Market Yards at Exhs.36 to 42 in support of his say that the claimants were taking different crops and were earning substantial amount from the sale of agricultural produces. The witness produced bill indicating purchase of seeds at Exh.43 and receipts at Exhs.44 to 48 to substantiate his say that irrigation facilities were available from the tubewell of Shakaraji Avadhaji. The witness asserted that prices of the lands acquired had sky rocketed because of surrounding industrial development and having regard to the good fertility of lands acquired, they

should be awarded compensation as claimed in the reference applications.

7. In cross-examination made on behalf of the State Government, the witness denied suggestion that irrigation was dependent on rains. During the course of cross-examination by the acquiring body, the witness stated that he had not seen lands which were subject matter of previous award and had no personal knowledge regarding crops which were being raised in the said lands. The witness also stated that he had no documentary evidence to substantiate his say that the prices of different crops at the relevant time, were as stated by him in his examination-in-chief.

8. On behalf of the acquiring authorities, witness Rameshbhai Kacharabhai Prajapati discharging duties as Deputy Mamlatdar in the Office of Special Land Acquisition Officer, Narmada Project, Mehsana was examined at Exh.50. This witness stated that the lands acquired were irrigated lands and determination of compensation at the rate of Rs. 2.70 ps.per sq.mt. by the Special Land Acquisition Officer was proper. The witness produced previous award of the reference court rendered in Land Acquisition Reference No.1211/92 at Exh.53 and previous award of reference court rendered in Land Acquisition Reference Case No.280/88 at Exh.54 to substantiate his claim that the claimants were not entitled to enhanced compensation. In cross-examination made on behalf of the claimants, the witness stated that when the award was made, he was not posted in the Office of Special Land Acquisition Officer, Narmada Project, Mehsana and no development in village Vansol had taken place as had taken place in villages Chhatral and Kadi.

9. On appreciation of evidence led by the parties, the reference court held that previous awards produced at Exhs.29, 30, 31 & 32 were not relevant, nor comparable for the purpose of determining compensation of the lands acquired in the instant case. However, according to the reference court, previous awards produced at Exhs.33 & 34 relating to lands of village Acharasan were comparable as well as relevant for determining compensation, inasmuch as there was little distance between the acquired lands in this case and the fertility of the lands which were subject matter of the previous awards and the fertility of lands acquired in the instant case, was similar. Therefore, after placing reliance on two previous awards produced at Exhs.33 & 34, the reference court by the impugned judgment has held that the claimants are entitled to compensation at the rate of Rs.32.70 ps. per

sq.mt., giving rise to present appeals.

10. Ms. Nandini Joshi, learned counsel for the State Government and Mr. Abhijit Joshi, learned counsel for the acquiring body, submitted that no irrigation facilities were available to the acquired lands and, therefore, the reference court should not have determined compensation payable to the claimants on the basis that the lands acquired were irrigated lands. According to the learned counsel, fertility, advantages available, potentiality, income derived from agricultural produces etc. so far as lands acquired in the instant case are concerned, are different from the location, advantages, potentiality etc. of the lands which were subject matter of previous awards produced at Exhs.33 & 34 and, therefore, previous awards should not have been relied upon while determining compensation payable to the claimants. What was emphasised was that in any view of the matter, because of glaring distinctive features, appropriate deduction ought to have been made from the compensation indicated in Exhs.33 & 34 before awarding compensation to the claimants in the present case. In support of their submissions, learned counsel placed reliance on the decisions of the Supreme Court in (1) M/s. Printers House Pvt.Ltd. v. Mst.Saiyadan (Deceased) by L.Rs. and others, AIR 1994 SC 1160, (2) State of Bihar v. Ratanlal Sahu and others, (1996)10 SCC 635, and (3) Kanwar Singh and others v. Union of India, (1998)8 SCC 136.

11. Mr. A.J.Patel, learned counsel for the claimants pleaded that the award of the Land Acquisition Officer as well as admission made by witness Rameshbhai Prajapati, who was examined on behalf of the acquiring authorities, indicate that the lands acquired were irrigated lands and, therefore, it cannot be said that any error was committed by the reference court in assessing market value of the lands acquired in the instant case on the basis that they were irrigated lands. According to the learned counsel, the claimants were taking different crops during the year and as they were earning substantial income by way of sale of agricultural produces, it cannot be said that any error was committed by the reference court in placing reliance on previous awards produced at Exhs.33 & 34 while determining compensation payable to the claimants. What was emphasised was that the boundary of village Vansol and village Acharasan was common and, therefore, the reference court was justified in placing reliance on previous awards relating to lands of village Acharasan, more particularly in absence of any distinctive features.

The learned counsel contended that a just compensation payable to the claimants is determined by the reference court and, therefore, the appeals being without substance, should be dismissed.

12. We have heard the learned counsel for the parties and taken into consideration the record of the case. In view of the admission made by the witness examined on behalf of the acquiring authorities, it becomes evident at once that the acquired lands were irrigated lands. Witness Rameshbhai Prajapati, examined at Exh.50 on behalf of the appellants, has in terms admitted in his examination-in-chief that the lands acquired in the instant case were irrigated lands and claimed that determination of compensation made by the Land Acquisition Officer on that basis was proper. Exhs.17 to 28 which are Extracts of Village Forms 7 & 12 relating to the acquired lands would also indicate that different crops such as millet, juvar, wheat, rice etc. were grown on the acquired lands. Even the award made by the Land Acquisition Officer also makes it manifest that he had determined compensation payable to the claimants on the basis that the lands acquired were irrigated lands. Under the circumstances, we are of the view that no error was committed by the reference court in determining compensation payable to the claimants in this case on the basis that the lands acquired were irrigated lands. It is well settled that the award rendered by the reference court in respect of similar lands and which has become final, can be taken into consideration for the purpose of determining market value of the lands acquired subsequently from the same village or adjacent village. In the category of sales fall the awards by Courts in previous case of land acquisition. They are judgments in personam based on the balance of evidence in the case adduced by the parties. Price of land in vicinity in previous land acquisition proceedings can be treated as affording a guide for determination of compensation to be awarded for lands acquired subsequently. In assessing the market value of a piece of land, the price paid in other transactions relating to land in the neighbourhood must be of some value. What its value should be determined by the court after considering all the evidence on which the previous award is founded. The awards given by the reference court are at least relevant material and may be in the nature of admission with regard to value of the lands on behalf of the State and if the lands involved in the awards are comparable lands and in reasonable proximity of the subsequently acquired lands, rates found in the said previous awards can be treated as reliable material to afford a basis to work

upon for determination of the compensation on a later date. Previous awards, therefore, produced at Exhs.33 & 34 cannot be dismissed as inadmissible for the purpose of determination of compensation payable to the claimants in the present case.

13. Therefore, the contention that previous awards produced at Exhs.33 & 34 are neither comparable, nor relevant for the purpose of determining compensation payable in the instant case and, therefore, should not have been relied on, cannot be accepted. Here in this case, several previous awards pertaining to different lands are relied upon by the claimants for their claim of enhanced compensation. When there are several comparable awards pertaining to different lands, the court has to choose that award relating to a land which closely compares with the lands, the market value of which it has to determine and to take the price of land of such award as basis for determination of value of the land under consideration. The underlying principle of fixing the market value with reference to comparable awards is to reduce the element of speculation. The main features in comparable award are; (1) the publication of notifications under section 4(1) of the Act should be proximate in point of time, (2) it must relate to land adjacent to the lands acquired later on, and (3) the lands should possess similar advantages. Having regard to these broad principles of assessment of compensation, we propose to proceed to consider evidentiary value of previous awards relied on by the claimants. Witness Malji Gobarbhai examined on behalf of the claimants, has stated in his deposition that village Acharasan is at a distance of 2 to 2 1/2 KMs. from village Vansol and that the two villages have common boundary. It was also stated by the witness that the lands of village Acharasan were also acquired for the main canal of Narmada Project and the quality of lands of village Acharasan previously acquired and that of their lands, was the same. In order to substantiate his claim that the boundary of two villages was common, he produced certificate issued by Talati-cum-Mantri at Exh.35. A bare look at Exh.35 indicates that village Acharasan and village Vansol have common boundary. Exh.33 which is previous judgment of the reference court in Land Acquisition Reference Cases No.1724/92 to 1735/92 indicates that the lands of village Acharasan were acquired for Narmada Main Canal pursuant to publication of notification under section 4(1) of the Act in Official Gazette on August 22, 1990. The evidence led in that case established that the claimants were taking crops like paddy, tobacco, wheat, castor seeds etc. and the Land Acquisition Officer had passed award

on April 9, 1992 offering compensation to the claimants at the rate of Rs.1.80 ps. and Rs.2.70 ps. per sq.mt. for non-irrigated and irrigated lands respectively. The court therein placed reliance on previous award relating to lands of village Budasan and found that as the fertility and potentiality of the lands were similar, it could be made basis for awarding compensation to the claimants in that case. Though the court found that the previous award of village Budasan produced by the claimants to claim enhanced compensation was comparable, it was of the opinion that in view of the situation, fertility, potential value, annual yield etc. some deduction was required to be made from the rate indicated in the said award and held that the claimants were entitled to compensation at the rate of Rs.32.70 ps. per sq.mt. Exh.33 further indicates that the reference court also took into consideration another previous award rendered by the reference court in respect of lands of village Borisana whereby the claimants were awarded compensation at the rate of Rs.50/- per sq.mt., but in view of certain distinctive features, the reference court held that the claimants were entitled to compensation at the rate of Rs. 32.70 ps. per sq.mt. The reference court also placed reliance on the previous award in respect of lands of village Jaspur which indicated that the claimants were paid compensation at the rate of Rs.40/per sq.mt. as on January 2, 1990 which was the date of publication of notification issued under section 4(1) of the Act, in the official Gazette and concluded that even on the basis of the said previous award, claimants were entitled to compensation at the rate of Rs. 32.70 ps. per sq.mt. Thus, examination of Exh.33 would show that reference court had relied on three previous awards for the purpose of justifying its conclusion that the claimants whose lands situated in village Acharasan were acquired, were entitled to compensation at the rate of Rs. 32.70 ps. per sq.mt. Moreover, after referring to three previous awards, the reference court also considered evidence led by the claimants regarding income from yield and deduced that the claimants were entitled to compensation at the rate of Rs. 32.50 ps. per sq.mt. even on yield basis.

14. Again, Exh.34, which is also previous award of reference court in relation to lands of village Acharasan, would indicate that agricultural lands were acquired for Narmada Main Canal pursuant to publication of notification issued under section 4(1) of the Act in the Official Gazette on June 16, 1990. Therein also the Land Acquisition Officer by his award dated January 31, 1992 had offered compensation to the claimants at the

rate of Rs.1.80 ps. per sq.mt. and Rs.2.70 ps. per sq.mt. for non-irrigated lands and irrigated lands respectively. Exh.34 further shows that after taking into consideration the distance between villages Budasan, Borisana and Acharasan, Court had taken into consideration previous awards relating to lands of villages Jaspur, Budasan as well as Borisana and had awarded compensation to the claimants at the rate of Rs. 32.70 ps. per sq.mt. The previous awards produced at Exhs.33 & 34 would go to show that the Land Acquisition Officer has treated lands of villages Acharasan and Vansol on the same basis and has, therefore, awarded compensation at the same rate i.e. Rs. 2.70 ps. per sq.mt. As observed by the Supreme Court in State of Madras v. A.M.Nanjan and another, AIR 1976 SC 651 if the lands involved in the awards are comparable lands and in the reasonable proximity of the acquired lands, the rates found in the previous awards should be treated as a reasonable material to afford a basis to work upon for determination of the compensation on a later date. Therefore, in our view, no error was committed by the reference court in placing reliance on previous awards produced at Exhs.33 & 34 for the purpose of determining compensation payable to the claimants in the present case. Exh.33 would indicate that the claimants in the said case were taking three crops in a year and had produced material such as cost of irrigation, income from sale of agricultural produces etc. to enable the court to determine compensation payable to them on yield basis; whereas in the present case, it is not satisfactorily proved by the claimants that they were taking three crops in a year, though they have produced documentary evidence in form of Village Forms 7 & 12 relating to lands acquired to prove that they were taking two crops in a year and bills etc. to establish their claim that they were deriving substantial income from the sale of agricultural produces and were using seeds also. However, on this ground alone, it would be wrong to hold that the previous awards produced at Exhs. 33 & 34 should not have been relied on by the reference court for determining compensation payable to the claimants in the instant case more particularly when in this case the claimants have not based their claim for compensation on yield method.

15. We have considered the authorities cited at the Bar by the learned counsel for the appellants, but we are of the opinion that the principle laid down in those decisions is not applicable to the facts of the present case, more particularly in view of our finding that the lands which were subject matter of previous awards were

comparable and similar to the lands which are acquired in the present case. Though on behalf of the appellants witness Rameshbhai K.Prajapati was examined, it could not be established that the lands which were subject matter of previous acquisition, had better facilities or advantages than the lands acquired in this case. When the previous awards relate to adjacent lands which are irrigated lands and do not abut on road or highway, it would not be proper to make any deduction as claimed by the learned Counsel for the appellants. Aspect of deduction from the rate indicated by the previous awards may become relevant if the lands which are subject matter of previous awards, were abutting on the main road and lands acquired from another village were situated in interior. As found earlier, boundary of village Acharasan and village Vansol is common and the acquired lands are situated at a distance of about 3 KMs. from the lands which were subject matter of awards produced at Exhs.33 & 34. In absence of major distinguishing features, distance of roughly 3 KMs. would not make much difference so as to affect the market price. Therefore, we do not find it necessary to make deduction from the rates indicated in Exhs.33 & 34 while determining compensation payable to the claimants.

On overall view of the matter, we are satisfied that a just award has been made by the reference court determining compensation payable to the claimants and, therefore, the appeals cannot be accepted.

For the foregoing reasons, all the appeals fail and are dismissed, with no order as to costs.

(J.M.Panchal,J.)

(M.C.Patel, J.)

(patel)